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**Special theme: "Territories, lands and natural resources"**

**Implementation of recommendations on the six mandated areas of the Forum and on the Millennium Development Goals**

## Information received from Governments

### Report of the Government of Spain

*Summary*

Spain's cooperation activities, consistent with the Programme of Action for the Second International Decade of the World's Indigenous People, has made cooperation with indigenous peoples one of its priorities. This has resulted not only in a significant increase in funding for this purpose, but also in the adoption of relevant regulatory instruments and strategy papers.

This document contains information on Spain's new policy for cooperation with indigenous peoples, with a focus on the adoption of its new Strategy for Cooperation with Indigenous Peoples, the adoption and future ratification of International Labour Organization (ILO) Convention No. 169 and progress in implementation of the recommendations made by the Permanent Forum on Indigenous Issues.

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# Contents


| | | *Paragraphs* | *Page* |
|---|---|---|---|
| I. | Introduction | 1–2 | 3 |
| | A. Spain's new Strategy for Cooperation with Indigenous Peoples | 3–7 | 3 |
| | B. ILO Convention No. 169 | 8–9 | 4 |
| II. | Progress in implementation of the recommendations made by the Permanent Forum at its fifth session | 10–30 | 4 |
| | A. Special topic: The Millennium Development Goals and indigenous peoples | 10–17 | 4 |
| | B. Indigenous women | 18 | 6 |
| | C. Indigenous children and adolescents | 19–21 | 6 |
| | D. Human rights | 22–25 | 7 |
| | E. Data collection and disaggregation | 26–27 | 7 |
| | F. Second International Decade of the World's Indigenous People | 28–30 | 8 |
| III. | Special theme for the sixth session: Territories, lands and natural resources | 31–33 | 8 |

# I. Introduction

1. Spain is becoming ever more aware of the need to focus specifically on indigenous peoples. Thus, for the first time, the Master Plan for Spanish Cooperation for 2005-2008 explicitly includes cooperation with indigenous peoples among its sectoral priorities. This commitment has increased both the quantity and quality of cooperation assistance in this area, and many of the Permanent Forum's recommendations are included in the new policy's principles.

2. The overall objective of this new policy is to promote the recognition and effective exercise of the right of indigenous peoples to coordinate their own social, economic, political and cultural development processes.

## A. Spain's new Strategy for Cooperation with Indigenous Peoples

3. Spain's new Strategy for Cooperation with Indigenous Peoples was adopted in 2006. This Strategy is the principal planning tool and ensures the consistency of all Spain's cooperation activities in this area.

4. The basic principles of the Strategy, which must be respected by all parties involved in Spain's cooperation activities, are:

- Self-identification as the primary criterion for the identification of indigenous peoples;
- The existence of close links between the identity, culture and world view of indigenous peoples; and effective control of their lands and territories;
- The right to self-development, which means the development, implementation and dissemination of their own development models and concepts, viewed from the perspective of their respective and various identities;
- The right to free, prior and informed consent, including the right to reject proposals for development and other types of cooperation projects and activities, particularly those which affect their lands and territories; and
- A basic focus on processes and on the recognition of rights.

5. The following general Strategy guidelines will characterize all Spain's activities of cooperation with indigenous peoples:

- Support for the full, effective participation of indigenous peoples in relevant local, national, regional and international decision-making processes and institutions with a view to legal recognition of their rights and the effective exercise thereof;
- Empowerment, and support for development of the capacities, of indigenous men and women and of their movements, organizations and institutions, including through support for education and training proposals that they themselves develop and through participatory methodologies that incorporate a gender perspective into development;
- Support for indigenous peoples' organizations, institutions and traditional authorities in their efforts to prepare their own development strategies and models with the full, effective participation of both men and women; and

- Support for indigenous peoples and their organizations in their efforts to protect their territories, environment, cultural systems and cultural heritage through action in defence thereof.

6. The Strategy establishes the following guidelines, which are to be followed in all activities of cooperation with indigenous peoples:

- Poverty and well-being must be considered from indigenous peoples' perspective in order to avoid acting in a manner contrary to their cultural norms and ways of life;
- Spain's cooperation activities must respect the individual and collective rights of indigenous peoples, particularly concerning their rights in respect of their land, territories and resources and their right to give free, prior and informed consent, and must ensure indigenous peoples' control and management of their land, territories and resources;
- Spain's cooperation activities must consider the effect of their actions on indigenous peoples' forms of land, territory and resource conservation and management and must assess their cultural, social and environmental impact; and
- Indigenous men and women and their organizations must be involved at all stages of a programme or project as key actors and players in its design, development and implementation.

7. The Strategy establishes the following sectors, inter alia, as priorities for action: support for bilingual, intercultural education models; development of intercultural health care and management models; and support for indigenous peoples' communication processes.

### B. ILO Convention No. 169

8. In December 2006, the Spanish Senate ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples, thus concluding the process initiated by Parliament in November of that year.

9. In 2007, a programme aimed at properly incorporating the Convention into Spain's policy for cooperation with indigenous peoples is scheduled to be implemented in cooperation with ILO.

## II. Progress in implementation of the recommendations made by the Permanent Forum at its fifth session

### A. Special topic: The Millennium Development Goals and indigenous peoples

10. With regard to paragraph 8 of the report of the Permanent Forum on its fifth session, at the urging of the Governments of Spain and Ecuador, the Sixteenth Ibero-American Summit of Heads of State and Government, held in Montevideo in November 2006, adopted the following paragraph of the Montevideo Declaration:

> 34. "We instruct the Ibero-American Secretariat (SEGIB) to launch an initiative which, within the framework of the Millennium goals and objectives, will make it possible to develop specific indicators for indigenous and Afro-descendent peoples as a useful tool for progress in combating, with their consent, the exclusion and poverty in which they live in many countries of the region."

11. With regard to paragraph 13 on upholding the linguistic rights of indigenous peoples, the Spanish Agency for International Cooperation (AECI) supported the organization by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Centre of Catalonia of a Seminar on the revitalization of indigenous languages and sustainable development, the purpose of which was to discuss the links between biological and linguistic diversity. The Seminar provided an opportunity for in-depth consideration of the concept of linguistic diversity and its implications for the revitalization of languages. Its conclusions were published in the UNESCO book, "Sharing a world of difference".

12. This priority was also reflected in paragraph 35 of the Montevideo Declaration: "We recommend that SEGIB should establish a working group, in cooperation with the Organization of Ibero-American States for Education, Science and Culture (OEI) and the Permanent Forum, in order to establish the bases, objectives and scope of the Ibero-American Institute for Native Languages".

13. With regard to paragraph 29, in 2006, AECI provided 200,000 euros in support of a project in Guatemala entitled "Coordination of the United Nations Millennium goals and objectives, peace agreements and national development priorities within the framework of the Mayan people's *Bactun*". Through this support, it sought to foster a new participatory development for Guatemala, inspired by the provisions of the peace agreements and the Millennium Development Goals. One of the project's activities is to encourage indigenous communities, social sectors and peoples to contribute to and assume ownership of the discussion, design, endorsement and promotion of economic, social and political processes that are directly related to peacebuilding and the Millennium Development Goals, in order to enrich the social and institutional aspects of a new development based on Guatemala's multicultural reality.

14. Also with regard to paragraph 29, AECI focused on achievement of the first of the Millennium Development Goals — eradicating extreme poverty and hunger — in Bolivia and Paraguay by working to support food sovereignty in order to promote the right of indigenous and native communities to gain access to and control of their productive resources through agreements with and projects of non-governmental development organizations. Thus, indigenous communities are a specific target group for activities related to food sovereignty. In Paraguay, for example, these activities take into account and promote the strategic role of indigenous women in ensuring their families' food security.

15. Support for better education and for the achievement of educational equity has been particularly significant. The Strategy attaches great importance to bilingual intercultural education. This has been expressed through the provision of 1,100,000 euros for the Programme of Basic Bilingual Education for Youth and Adults (PRODEPA KO'E PYAHU), carried out jointly with the Organization of Ibero-American States; and 290,000 euros for the Bilingual Intercultural Education Project in the Loreto Region (EBI-LORETO), carried out jointly with the Hispano-Peruvian

Cooperation Fund of the Republic of Peru. Funding in the amount of 202,000 euros was also provided in support of a project for the development and implementation of a basic intercultural education programme from preschool to third grade in schools located in the territory of the Kuna people of Panama; funding was also provided for efforts to strengthen community education processes in the territory of indigenous peoples of the Department of Cauca, Colombia, in accordance with lifestyle plans that they themselves developed.

16. In 2006, the Spanish Government made the remainder of its contribution to the social capital of the Fund for the Development of Indigenous Peoples of Latin America and the Caribbean, thus fulfilling its 5 million dollar commitment.

17. With regard to paragraph 42, the Spanish Government has undertaken to increase its official development assistance (ODA) to 0.5 per cent in 2008 and to achieve 0.7 per cent in 2012; funding for cooperation with indigenous peoples will be increased proportionately. Currently, 6 per cent of AECI's total budget is allocated for that purpose.

## B. Indigenous women

18. With regard to paragraph 49, AECI supports, and plans to support, initiatives relating to the sexual and reproductive health of indigenous women and girls, primarily in Panama (through support for the General Kuna Congress and the Kuna Yala women's collective), Argentina (the north-western and north-eastern communities) and Bolivia, where an agreement aimed at improving primary care and sexual and reproductive health has been signed. Also noteworthy is a project on the economic and gender empowerment of indigenous women living in the Obrajes Prison, aimed at reducing poverty and promoting the exercise of their sexual and reproductive rights.

## C. Indigenous children and adolescents

19. Spain ratified the Convention on the Rights of the Child in 1990. Since then, it has maintained its commitment to promoting the rights of children and adolescents.

20. On 7 and 8 July 2005, AECI hosted and funded the First Ibero-American Meeting on the Rights of Indigenous Children and Adolescents, organized jointly by the United Nations Children's Fund (UNICEF) Regional Office for Latin America and the Caribbean and the indigenous peoples. Spain is carrying out activities pursuant to the declaration adopted at this meeting.

21. With respect to paragraph 66, Spain has been working with the UNICEF Regional Office for Latin America and the Caribbean to implement the programme entitled "Rights of indigenous children in Latin America" since 2005. To date, Spain has undertaken to contribute 6 million euros for the execution of this project, which is being implemented in 16 Latin American countries and whose fundamental objective is to ensure that the rights of indigenous children are respected by all members of society and are taken into account in development models at the regional, national and local levels. The common denominator for this initiative is the development of protective environments for indigenous children so that the

Millennium Development Goals can be achieved at the local level, focusing particularly on Goals Nos. 1, 2, 3, 4, 5, and 6.

## D. Human rights

22. The promotion of respect for the individual and collective rights of indigenous peoples is the cornerstone of Spain's policy for cooperation with indigenous peoples. Following this commitment, in 2006 Spain co-sponsored the draft General Assembly resolution containing the Declaration on the Rights of Indigenous Peoples, which it hopes will be adopted by the end of 2007.

23. With respect to paragraph 81, in the last few years the AECI Indigenous Programme has developed a specific policy on supporting the participation of indigenous representatives at international forums on the recognition and promotion of their rights. This work is carried out mainly through specialized organizations. Significant support has been provided for the participation of indigenous representatives at the meetings of the International Indigenous Forum on Biodiversity, in the framework of the meetings of the Convention on Biological Diversity (CBD) and the meetings of other environmental conventions, and at the meetings of the Permanent Forum and the Working Group on Indigenous Populations. AECI will double its funding for participation during 2007 and 2008.

24. With respect to paragraph 83, and following up the recommendations of the fourth and fifth sessions on indigenous peoples in voluntary isolation, Spain supported the holding of the Regional Seminar on Indigenous Peoples in Voluntary Isolation and in Initial Contact of the Amazonian Basin and El Chaco. This seminar was held in Santa Cruz de la Sierra, Bolivia, from 20 to 22 November 2006 and was organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Vice-Ministry of Lands of the Government of Bolivia, the International Working Group for Indigenous Affairs (IWGIA) and the Confederacy of Indigenous Peoples (CIDOB). The seminar brought together over 90 participants, including government representatives, indigenous organizations and experts from the seven countries of the Amazon and Gran Chaco (Bolivia, the Bolivarian Republic of Venezuela, Brazil, Colombia, Ecuador, Paraguay and Peru) and from international organizations that are particularly influential in this area, with a view to reaching an agreement on the situation of indigenous peoples in isolation and in initial contact and to formulating recommendations for States, international agencies, experts and indigenous organizations on protecting the rights of these peoples. AECI plans to maintain its support for this initiative in 2007 and 2008.

25. The strategy for strengthening the rule of law in some countries is also significant. In Peru, support has been provided to bodies responsible for guaranteeing basic rights. The project to help the Ombudsman Office to implement a national system for monitoring public policies in education and health with a rights-based approach, which is part of the Hispano-Peruvian Cooperation Programme 2007-2010, is of great importance.

## E. Data collection and disaggregation

26. With respect to paragraph 93, Spain has supported the organization of an International Expert Seminar on Indicators relevant to Indigenous Peoples and

Biodiversity, to be held in Ifugao, the Philippines, from 4 to 9 March 2007, by publishing the results compiled by the Tebtebba Foundation in "Indicators relevant to indigenous peoples, the Convention on Biological Diversity and the Millennium Development Goals".

27. The objective of this initiative is to contribute to the monitoring and implementation of the strategic plan and 2010 target of the Convention on Biological Diversity and the Millennium Development Goals that are relevant to indigenous peoples, and to strengthen the full, effective participation of indigenous peoples in the development of indicators relating to the Convention and the Goals. It also aims to strengthen the work of the United Nations agencies, Governments, academic institutions and indigenous peoples in data collection and disaggregation of key indicators relating to health and the ecological, social and cultural welfare of indigenous peoples.

### F. Second International Decade of the World's Indigenous People

28. Environmental sustainability is one of the cross-cutting priorities of Spanish cooperation, as reflected by the AECI Strategy for Cooperation with Indigenous Peoples, which recognizes the fundamental role of indigenous peoples in biodiversity conservation.

29. The Government of Spain has supported the programme under the Convention on Biological Diversity through AECI and, by the end of 2006, had contributed 898,865 euros to the programme. In 2005, it contributed 250,000 euros towards financing the preparations for the fourth meeting of the working group on article 8 (j) and the meeting of the working group on access to genetic resources and benefit-sharing, held in Granada in January 2006. In 2006, an assistance grant of 250,000 euros was also provided to the Technical Secretariat of the Convention and this was allocated to the organization of activities relating to the decisions adopted at the eighth meeting of the Conference of the Parties to the Convention on Biological Diversity on the programme of work under article 8 (j), including support for the initiative on indicators.

30. With respect to paragraph 136, AECI has developed a plan for training and awareness-raising concerning indigenous issues aimed at civil services, non-governmental organizations, universities and Spanish social networks. This plan will be implemented during 2007 by specialized non-governmental organizations under the Indigenous Programme. As part of its awareness-raising efforts, the Indigenous Programme will continue to support the annual Indigenous Film Festival in Madrid and to strengthen the indigenous communication networks in Latin America.

## III. Special theme for the sixth session: Territories, lands and natural resources

31. One of the fundamental principles of Spain's new policy for cooperation with indigenous peoples is the recognition of the unique link between the identity of indigenous peoples and the effective control of their lands and territories. Spain's

Strategy for Cooperation with Indigenous Peoples includes the following priority actions:

- Institutional support for the recognition and guarantee of the territorial and environmental rights of indigenous peoples in domestic and international legal systems, and of their bearing on the conservation of the environment;
- Support for indigenous peoples in relation to land ownership and demarcation;
- Development, using participatory methodologies, of specific, gender-disaggregated environmental indicators for indigenous peoples, incorporating a gender perspective;
- Support for the effective control of territories and natural resources of indigenous peoples, giving priority to the formulation of their own strategies and plans for land management and use, with a view to preserving their lifestyles, development models and respective identities;
- Support for the recognition and effective realization of the rights of indigenous peoples with respect to biodiversity resources, including genetic resources, and with respect to their knowledge, technologies and traditional practices and innovations, drawing attention to their scientific, economic and cultural value and their role in environmental preservation, and promoting the establishment of adequate legal measures for their protection, including patent recognition;
- Support for the full, effective participation of the representatives of indigenous peoples at relevant international forums on the environment and sustainable development.

32. Following the commitment undertaken by Spain at the Earth Summit, held in Rio de Janeiro in 1992, AECI established in 1998 a Chilean pine programme as a specific means of contributing to sustainable development in Latin America. In 2006, the programme was renewed as Araucaria XXI and included an initiative entitled "Promoting environmental governance and equal opportunities for access to natural resources", which was aimed at vulnerable populations, particularly women and indigenous peoples.

33. With respect to paragraph 156, the AECI Indigenous Programme has supported the organization of a preparatory workshop for the sixth session of the Permanent Forum on lands, territories and natural resources, which will be held in Argentina in early 2007. This activity has four basic objectives:

- To enhance the participation of the indigenous peoples of Argentina in relevant United Nations bodies;
- To prepare an assessment of the situation with respect to lands and territories with the participation of the indigenous communities of Argentina;
- To establish a dialogue with the Government and United Nations agencies to promote their greater involvement and coordination of the work of the Permanent Forum with respect to the rights of the indigenous peoples of Argentina;
- To make adequate preparations for the participation of indigenous peoples in the Permanent Forum.

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## Information received from Governments**

### Australia

*Summary*

The present report outlines the Australian Government's policy on improving outcomes for Australian indigenous peoples by providing them with the tools to make better use of ownership of indigenous land. Broadly speaking, the policy is to ensure that the rights of indigenous people to land are recognized and that those rights are leveraged to provide economic and social benefits to indigenous people. The report outlines how this policy is being put into practice through reforms to land-rights legislation and the native title system.

## Indigenous land reform in Australia

## I. Indigenous land in Australia

1. Land is central to the lives and well-being of indigenous Australians. It underpins indigenous history and culture, is fundamental to indigenous peoples' spiritual beliefs and can provide an economic base. Indigenous people have acquired rights to and interests in land in Australia in various ways, and approximately 16 per cent of the continent is now owned or controlled by indigenous people.[1]

* E/C.19/2007/1.

** The submission of the present report was delayed to ensure the inclusion of the most recent information.

[1] *Overcoming Indigenous Disadvantage* report, 2005. This does not include land in respect of which there are native title rights and interests.

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2. Statutory land-rights regimes are a key way in which indigenous people have acquired interests in land. Every state and territory in Australia, with the exception of Western Australia, has some form of statutory land-rights regime. They have led to the granting of land to indigenous communities as a result of claims or transfer processes established by legislation.

3. The first land-rights legislation to allow for indigenous people to make claims to land was the Aboriginal Land Rights (Northern Territory) Act 1976. The basis of that regime was the findings and recommendations of the Woodward Commission, which was established by the Australian Government to inquire into Aboriginal land rights. The Act provides for the granting of traditional Aboriginal land in the Northern Territory to Aboriginal land trusts, which hold the land for the benefit of the traditional Aboriginal owners.

4. While the interests granted under land-rights legislation vary, the most widespread form of tenure is an inalienable freehold title that is held on a communal basis. Under this form of tenure, Aboriginal people as a group, rather than as individuals, have ownership of a particular area of land and are prohibited from selling their interest. There are often other legislated restrictions that limit indigenous people's ability to deal with their interests in land. Those restrictions can take the form of a prohibition on mortgage or the imposition of consent requirements and maximum terms for the grant of a lease. The rationale for the restrictions is the need to ensure that the land is available for future generations to enjoy. However, the limitations the restrictions have placed on opportunities for economic development have brought into question the desirability of maintaining the current level of restrictions, and the possibility of striking a more appropriate balance is being explored.

5. In addition to statutory land rights, native title rights have been recognized since the decision of the High Court of Australia in the *Mabo* case.[2] Unlike statutory land rights, which involve the granting of various interests through legislation, native title involves the recognition of pre-existing rights and interests. Native title is the recognition, in Australian law, that some indigenous people continue to hold rights to lands and waters that derive from their traditional laws and customs. Native title rights and interests may range from the exclusive right to possess, occupy, use and enjoy land and waters to lesser rights and interests, such as the right to hunt, fish and gather.

6. The Native Title Act 1993 was enacted following the *Mabo* decision to provide a system for the recognition of these rights. The Act includes a future acts regime, which regulates future development affecting native title rights and gives native title holders and claimants the right to negotiate about some future acts. The Act also provides for the making of indigenous land-use agreements, which are voluntary agreements between a native title group and other people about the use and management of land and waters.

7. Apart from the granting of statutory land rights and recognition of native title rights, there are various other ways in which indigenous people have acquired rights and interests to land in Australia. The Aboriginal and Torres Strait Islander Land Fund was established in recognition that many indigenous people would be unable to assert their native title rights owing to dispossession. The Indigenous Land

[2] *Mabo vs. Queensland* (No. 2) (1992) 175 CLR 1.

Corporation receives money from the Fund to purchase and manage land for indigenous Australians. In other parts of Australia, land has been reserved for the benefit of indigenous people. For example, in Western Australia, where there is no land-rights legislation, large tracts of land are Aboriginal reserves. Ownership and joint management of national parks is another way in which indigenous people have gained control over land.

8. The Australian Government is currently implementing reforms with regard to indigenous land, particularly in respect of native title and land rights. The aim of these reforms is to ensure that an efficient system is provided for the recognition of rights to land and that those rights can provide social and economic benefits to indigenous people.

## II. Land-rights reform: Aboriginal Land Rights (Northern Territory) Act 1976

9. The Aboriginal Land Rights Act, which was enacted more than 30 years ago, has been successful in returning land to traditional Aboriginal owners, and approximately 45 per cent of the Northern Territory is now owned or controlled by Aboriginal people.[3] However, the Act has not been particularly successful in terms of improving Aboriginal people's overall well-being. Despite having such a large land base, Aboriginal people have derived little lasting economic benefit from the land that they hold and remain socio-economically disadvantaged.

10. The primary objective of reforms to the Act is to facilitate a higher level of economic development on Aboriginal land. The reforms are aimed at achieving this goal while maintaining the inalienable, communal nature of the title to land, which is recognized as an important characteristic of the rights that Aboriginal people hold.

11. One of the most significant elements of the reforms is the introduction of a township leasing scheme. The voluntary scheme will facilitate home ownership and the establishment of businesses in townships, resulting in the normalization of those areas. Aboriginal land trusts will be able to enter into 99-year head leases with an entity to be established by either the Northern Territory Government or the Australian Government. The entity will then issue subleases, which can be mortgaged, to individuals and businesses. Negotiations have begun with several communities that have expressed an interest in the scheme.

12. The reforms also relax provisions that deal with the granting of other interests in Aboriginal land. To enable Aboriginal land trusts to grant such interests more freely, the consent of the Minister for Families, Community Services and Indigenous Affairs will be required in fewer circumstances. For example, the Minister's consent will now be required only when a lease or licence is granted for a term greater than 40 years (previously it was 10 years). So that financial institutions will be willing to accept a lease as security for a loan, advance consent can be provided for the mortgage or transfer of a lessee's interest.

13. The Australian Government understands that changes to land tenure arrangements alone do not ensure that indigenous people have the financial capacity

[3] Overcoming Indigenous Disadvantage report, 2005.

to support a loan. Consequently, the Australian Government is providing support to indigenous people through a programme for home ownership on indigenous lands. The programme, together with other, complementary measures, will provide access to affordable home-loan financing, discounts on the purchase price of houses and money-management training. This support will be available not only to people in the Northern Territory, but in jurisdictions across Australia where long-term leases over indigenous land are available. The Australian Government is now working with state Governments to ensure that indigenous people across Australia can have access to the programme.

14. In addition to changes to leasing arrangements, the reform of the Aboriginal Land Rights Act will promote economic development. For example, the reforms include provisions to expedite the negotiation period for the grant of a licence for exploration on Aboriginal land, while maintaining the traditional owner veto (power to withhold consent). Since exploration and mining are principal means by which Aboriginal people gain economic benefits from their land, these changes could have a positive impact. In addition, the reforms will encourage localized participation in decisions about the development of Aboriginal land. This will be facilitated through the delegation of land council powers to regional groups and the clarification of the procedures for the establishment of new land councils.

## III. Native title reform: Native Title Act 1993

15. Native title has been recognized in Australia only since 1992 and thus is a much newer concept than statutory land rights. In the 14 years in which the native title system has been operating, 95 native title determinations have been made and 266 indigenous land-use agreements have been registered.[4] Nevertheless, a very large number of claims remain unresolved, and stakeholders across the system acknowledge that the current processes for recognizing native title rights remain expensive and slow.

16. Reforms to the native title system involve necessary structural changes to ensure that the system delivers effective outcomes more expeditiously for all parties and that the reaching of agreement is encouraged in preference to litigation. Some of the reforms will be implemented through legislative amendments,[5] while others will be achieved through non-legislative initiatives.

17. In order to limit the potential for wasted resources and unnecessary delay, the reforms will promote better coordination between the Federal Court of Australia and the National Native Title Tribunal, which both play important roles in the native title system. The Tribunal will be vested with primary responsibility for mediating native title matters, and opportunities for simultaneous mediation by the Federal Court and the Tribunal will be removed. To help ensure that mediation is effective, parties and their representatives will be required to mediate in good faith.

18. Consistent with the Australian Government's policy of encouraging the resolution of native title claims through agreement, proposed reforms will enable the

[4] As at 5 February 2007 (www.nntt.gov.au).

[5] The Native Title Amendment Bill 2006 was introduced into the Australian Parliament on 7 December 2006 and was referred to the Senate Legal and Constitutional Affairs Committee. At the time of writing, the Bill had not yet been passed.

Tribunal to issue recommendations and findings in respect of matters relating to claims. Although non-binding in nature, it is hoped that those recommendations and findings may provide guidance to parties, assisting them in reaching a negotiated outcome. New guidelines on funding for respondents in native title claims[6] provide another means of assisting parties in reaching agreement. The new guidelines will expand the circumstances in which funding is provided during the right-to-negotiate process while limiting the circumstances in which financial assistance is provided for court proceedings.

19. Reforms are also being made to the operation of native title representative bodies and prescribed bodies corporate. Native title representative bodies are funded by the Australian Government to provide legal and related services to native title claimants and holders under the Native Title Act, while prescribed bodies corporate are responsible for managing native title rights following a determination by the Federal Court of Australia that native title exists. The ability of native title claimants and holders to protect their rights and interests is intrinsically linked to the performance of native title representative bodies and prescribed bodies corporate.

20. The proposed reforms to native title representative bodies involve the replacement of the current system of indefinite recognition with fixed-term arrangements. The intended result is that they will become more focused on achieving outcomes for their clients. Reforms to prescribed bodies corporate will include expanding the circumstances in which native title representative bodies can assist them; improving their access to existing sources of assistance; permitting them to recover certain costs from land users who stand to benefit from access to native title land; and expanding the skill base available to them by allowing non-native title holders to become members when the native title holders want this to happen. These reforms are complemented by non-legislative measures such as the provision of training to build the capacity of native title representative bodies and prescribed bodies corporate.

21. Finally, the reforms are aimed at improving communication and transparency within the native title system. This is being achieved largely through regular meetings and forums involving all stakeholders. The result will be faster, more affordable and more effective native title outcomes.

## IV. Conclusion

22. **The Australian Government is committed to the recognition of indigenous peoples' rights to land. However, this commitment is coupled with awareness that recognition alone will not reduce the disadvantage faced by indigenous Australians: symbolic recognition must go hand in hand with practical action. Consequently, the Australian Government is implementing reforms to ensure not only that rights to land are recognized, but that those rights are utilized in such a way as to provide social and economic benefits to indigenous people, now and in the future.**

[6] Guidelines on the Provision of Financial Assistance by the Attorney-General under the Native Title Act 1993.

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## Information received from Governments**

### Switzerland

*Summary*

The present document contains comments by Switzerland on a number of recommendations made by the Permanent Forum at its fifth session. Switzerland stated that it endorsed most of the recommendations and provides information and comments on other recommendations.

* E/C.19/2007/1.
** The submission of the present report was delayed in order to include the most recent information.

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# I. Introduction

1. The recommendations contained in the report of the Permanent Forum on Indigenous Issues on its fifth session[1] are consistent with good practices in the area of indigenous peoples' rights. Switzerland especially welcomes the fact that a rights-based approach is being progressively introduced.

2. Switzerland endorses most of the recommendations and puts forward comments on some recommendations and paragraphs.

# II. Comments on recommendations made by the Permanent Forum at its fifth session[2]

*Paragraph 4*

3. Switzerland supports the observations contained in paragraph 4 as they are in conformity with the rights-based approach adopted by the Swiss Agency for Development and Cooperation for its development work. Although redefining the Millennium Development Goals at the present time would not be a useful exercise, States should consistently ensure the inclusion and participation of indigenous groups in order to facilitate more effective implementation of the goals. Similarly, in large-scale development projects that affect indigenous communities or that are undertaken on land that historically belongs to indigenous communities, there must be effective participation, consultation and prior agreement (namely, free and informed prior consent) by those communities before such projects can be implemented.

*Paragraph 11*

4. Switzerland recognizes the right of indigenous peoples to self-determination, but does not expressly recognize that right as linked to article 1 of the International Covenant on Civil and Political Rights. In general, Switzerland supports the overall thrust of the observation made in this paragraph.

*Paragraph 15*

5. Environmental sustainability, access to land and natural resources are key issues that have an impact on indigenous groups' enjoyment of their economic, social and cultural rights. The adoption of an indigenous policy by the United Nations Environment Programme, as has been done by the United Nations Development Programme (UNDP), would have a strong and positive impact on the rights of indigenous peoples worldwide.

*Paragraph 19*

6. Switzerland supports the progressive recommendations in paragraph 19. It should be noted, however, that Switzerland has not yet ratified Convention No. 169 of the International Labour Organization (ILO).

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[1] *Official Records of the Economic and Social Council, 2006, Supplement No. 23* (E/2006/43).

[2] Ibid., chap. I.B.

*Paragraphs 24 and 25*

7. There is a need for enforced mainstreaming of indigenous rights throughout the United Nations system and in the policies of international development organizations, so that a coherent framework underpins all strategies and processes supporting the integration of indigenous issues in the achievement of the Millennium Development Goals.

*Paragraph 30*

8. Switzerland supports this progressive recommendation, but would like to see it include specific references to indigenous women and children, to make it consistent with the legal framework provided by the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. This would also help to mainstream gender issues into all components of the Millennium Development Goals.

*Paragraph 34*

9. The private sector and multinational corporations must be aware of how their practices can have an impact on the lives and livelihoods of indigenous communities. However, with regard to access to genetic resources, related traditional knowledge and the sharing of the commercial and other benefits arising from their use, measures under patent law are being discussed at the international and national levels, including, in particular, requirements for patent applicants to disclose certain information in patent applications. Although Switzerland does not itself require the disclosure of sources in patent applications, it has submitted specific proposals on the disclosure of sources to the World Intellectual Property Organization, in order to support the process and in the interests of balanced patent protection for biotechnological inventions. More information on the proposals submitted by Switzerland are available at www.ige.ch/E/jurinfo/j105.shtm.

*Paragraphs 36 and 37*

10. The approach described in paragraphs 36 and 37 is fully supported by Switzerland. Country programmes targeted at the reduction and prevention of the spread of HIV/AIDS and its management must involve indigenous peoples. Special provisions should be made for raising awareness in indigenous communities and helping them to adopt sustainable and culturally sensitive practices for prevention and management of HIV/AIDS.

*Paragraph 40*

11. The recommendation is supported by Switzerland. Within the framework of its human rights strengthening programme, jointly run with the Office of the United Nations High Commissioner for Human Rights, UNDP has updated its policy on indigenous issues in only two countries, Ecuador and Kenya. It would be useful to obtain feedback from offices in those countries on how and whether the process has been successful, and whether outreach to more UNDP country offices is planned for the near future.

*Paragraph 41*

12. The enhancement of conflict prevention and peacebuilding capacities of indigenous peoples is extremely important to the understanding and prevention of localized conflicts. However, training on its own is often not enough. Communities should be supported to create indicators against which they can regularly monitor and report on local situations; they should also be able to draw attention to situations that risk spiralling out of control. An amended recommendation in that sense would be supported by Switzerland.

*Paragraph 43*

13. In its current form, the recommendation in paragraph 43 is confusing and needs further clarification. Switzerland has strong reservations concerning this paragraph. First of all, it is unclear whether it refers to private and/or public financial investments, and whether those investments are made by States or international organizations. Furthermore, it is not clear why reference is made exclusively to financial investments, given that there are other forms of investment that can affect the interests of indigenous peoples to a similar degree.

14. As far as trade agreements are concerned, the basic objective is that all measures in the social and environmental fields do not constitute hidden protectionism and that they are not contrary to the principle of national treatment. All measures taken in this field thus have to be consistent with the rules of the World Trade Organization, of which Switzerland is a member. Switzerland asks for clarifications on the creation, via the current formulation, of a possible form of conditionality in this field.

15. Regarding officially supported export credits, Switzerland follows the environmental guidelines ("common approaches") of the Export Credit Group of the Organization for Economic Cooperation and Development. The guidelines include the requirement that, before taking decisions on officially supported export credits, the members of the Group identify and evaluate the environmental impact of projects, including the impact on indigenous people. If an environmental impact assessment is needed, the applicant (in this case the exporter) is responsible for providing one.

*Paragraph 57*

16. This is an important recommendation. Youth plays a fundamental role in social development. Switzerland participates actively in the meetings of the Commission for Social Development, at which issues relating to the young, including indigenous children and youth, are discussed in depth. Switzerland has ratified ILO Conventions Nos. 138 (Minimum Age Convention) and 182 (Worst Forms of Child Labour Convention), and financially supports the ILO International Programme on the Elimination of Child Labour in Pakistan.

*Paragraph 83*

17. Switzerland has not yet ratified ILO Convention No. 169. An in-depth analysis of the implications of ratification of that Convention in relation to the Swiss travellers community has been carried out. Although the Convention has not been ratified, its principles have been included in the foreign policy of Switzerland, especially with regard to development cooperation.